

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 213

READING COMPANY, SUCCESSOR OF PHILADELPHIA &
READING RAILWAY COMPANY, PETITIONER,

vs.

JOHN L. KOONS, ADMINISTRATOR OF LESTER M. KOONS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED NOVEMBER 23, 1934

CERTIORARI GRANTED JANUARY 5, 1935

(30,713)

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[fol. 1a] **IN COURT OF COMMON PLEAS OF DAUPHIN
COUNTY**

DOCKET ENTRIES

February 6, 1922.—John L. Koons, Administrator of Lester M. Koons, vs. Philadelphia & Reading Railway Co. 222. Geyer, Brady. Summons in Trespass, retble. 27 February inst.

February 7, 1922.—Served summons on deft. by copy to Harry F. Beck, Chief Clerk of the Philadelphia Division of the Philadelphia & Reading Ry. Co. at the office of Supt. at Harrisburg, Pa. So. ans. G. W. K. Shiff.

February 6, 1922.—Plaintiff's statement filed.

February 6, 1922.—Service of statement accepted by Jno. T. Brady, Atty. for Deft.

April 1, 1923.—I. L. April 2, 1923. Contd. for cause.

April 2, 1923.—On Petition filed, rule granted on plff. to show cause why judgment of non pros. should not be entered. Retble. in 10 days.

April 5, 1923.—Service of rule accepted by Jno. R. Geyer, Atty. for Plaintiff.

April 14, 1923.—Answer to rule filed.

April 18, 1923.—Continued for cause.

June 7, 1923.—A. L.

July 11, 1923.—The motion of the defendant for judgment of non pros. is overruled. See opinion filed.

October 7, 1923.—I. L.

October 12, 1923.—Stipulation filed.

October 12, 1923.—Trial ordered, jury called, came etc. twelve good and lawful men and women of Dauphin Co., all of whom having been sworn or affirmed according to law, do say October 12, 1923, that [fol. 2a] they find in favor of plaintiff and against defendant in the sum of twenty-five hundred and ten dollars (\$2,510) and costs.

October 23, 1923.—Judgment on the verdict.

November 8, 1923.—Certiorari sur appeal No. 11, May Term, 1924, from the Supreme Court recd. and filed.

November 13, 1923.—Bond on appeal filed.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY, JANUARY TERM,
1922

No. 222

JOHN L. KOONS, Administrator of Lester M. Koons,

vs.

PHILADELPHIA & READING RAILWAY COMPANY

PETITION FOR JUDGMENT OF NON PROS. AND ORDER THEREON

To the Honorable the Judges of the Court of Common Pleas of
Dauphin County:

The petition of Philadelphia & Reading Railway Company, defendant above named, respectfully represents:

That as appears from the statement of claim, filed by plaintiff in the above stated case, Lester M. Koons while in the employ of your petitioner at a place commonly known as Rutherford Yards, Dauphin County, Pennsylvania, on or about the 22d day of April, 1915, sustained injuries from which he died on the same day, or in the early hours of the 23d day of April, 1915.

That on April 20, 1916, John L. Koons and Malinda D. Koons, the surviving parents of the said Lester M. Koons brought their action against your petitioner entered to No. 410 June Term, 1916, Dauphin Common Pleas, to recover for the death of the said Lester M. Koons, [fol. 3a] the suit being under the statutes in force in the Commonwealth of Pennsylvania, wherein a recovery was denied upon the ground that the defendant and the deceased were both engaged in interstate commerce at the time of the happening of the accident, and that no liability existed under the action as instituted.

That the judgment of the said Court of Common Pleas of Dauphin County in favor of your petitioner was affirmed by the Supreme Court upon the first day of July, 1921, the said case being reported in 271 Pa. 468.

That thereafter, upon the 23d day of September, 1921, letters of administration on the estate of Lester M. Koons were duly granted to John L. Koons, the plaintiff above named, by the Register of Wills of Dauphin County, prior to which time no letters of administration or letters testamentary in said estate had been granted to any one.

That on the 6th day of February, 1922, more than 6 years after the death of said Lester M. Koons, the above stated action was instituted against your petitioner to recover for the death of the said Lester M. Koons under the provisions of the statutes of the United States, particularly the Act of Congress of April 22, 1908, and its supplements, known as the Federal Employers' Liability Act.

That section 6 of the Act of April 22, 1908, as amended by the Act of April 5, 1910 (United States Compiled Statutes 1916, section 8662) provides:

"No action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued."

That the above stated action was instituted on February 6, 1922, more than six years after the death of the said Lester M. Koons, on [fol. 4a] which date the cause of action accrued, and is, therefore, barred by the limitation contained in the Act of Congress.

Your petitioner therefore prays that a rule be granted upon the above named plaintiff to show cause why a judgment of non pros. should not be entered in the above stated action because the writ was not issued in time.

Philadelphia & Reading Railway Co., by Jno. T. Brady, Attorney.

Sworn to by John T. Brady; jurat omitted in printing.

And now, April 2, 1923, rule granted on plaintiff as prayed for to show cause why a judgment of non pros. should not be entered. Returnable in 10 days.

By the Court.

Frank B. Wickersham, Judge.

April 5, 1923, service accepted.

Jno. R. Geyer, Attorney for Plaintiff.

[fol. 5a] IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

[Title omitted]

ANSWER

And now comes John L. Koons, Administrator of Lester M. Koons, the plaintiff in the above entitled proceedings, and to the petition of the defendant under which a rule was granted to show cause why a judgment of non pros. should not be entered because the writ was not issued in time, files this his answer.

The petitioner admits the facts as in the said petition set forth to be true, but avers that the statement thereof does not contain all of the material and relevant matters, and for better statement avers:

1. On or about the 22d day of April, 1915, Lester M. Koons, for whose death this action was brought, while in the employ of defendant, and through the negligence of the defendant, sustained injuries from which he died in the early hours of the 23d day of April, 1915.

2. On the 20th day of April, 1916, John L. Koons and Malinda Koons, the surviving parents of the Lester M. Koons, brought their

action against this defendant in the Court of Common Pleas of Dauphin County to No. 410 June Term, 1916, to recover for the death of the said Lester M. Koons, the action being under the statute in force in the Commonwealth of Pennsylvania.

3. That in the said action to the plaintiff's statement filed the defendant filed no affidavit of defense.

4. That because of the congested state of the trial list this action [fol. 6a] could not come for trial before the first of January, 1917, and during the winter months could not be brought to trial because of the then serious illness of counsel for the plaintiff.

5. That the trial of the cause was begun on the 17th day of May, 1917, and at this trial the defendant produced affirmative proof that the deceased at the time the injuries were sustained was engaged in interstate commerce.

6. That the proof submitted consisted of the records of the Defendant Company in its possession, and of which the plaintiffs in that cause had no knowledge or notice before the trial, that the wreckage which the deceased was at the time of the injury, engaged in unloading from a car which had been shipped from Gettysburg Junction to Harrisburg, was in fact parts of a freight car which had come into the Commonwealth of Pennsylvania from New Jersey empty; had passed through Pennsylvania to Gettysburg on its route home to the Mississippi Central Railroad Company, when it was wrecked at Gettysburg, and then loaded on a car and sent to the yards near Harrisburg for repair and rebuilding.

7. That the jury found as a fact that the deceased was not engaged in interstate commerce and returned a verdict on May 19, 1917, in favor of the plaintiffs and against this Defendant, in the sum of \$1,690.00.

8. That upon May 19, 1917, the defendant therein filed its motion for judgment notwithstanding the verdict on the contention that under all the evidence it appeared that the deceased was engaged in interstate commerce, and no recovery could be had.

9. That as soon as the record was transcribed and the vacation season ended, in the month of October, 1917, this matter was argued by counsel.

10. That no decision was reached by the trial judge until April [fol. 7a] 3, 1920, when the verdict was set aside and it was directed that the judgment be entered in favor of the defendant.

11. That the defendant did not upon the said order cause any judgment to be entered in its favor until September 29, 1920, when a judgment was so entered.

12. That upon September 30, 1920, the plaintiffs in that proceeding filed their appeal to the Supreme Court of the Commonwealth of Pennsylvania.

13. That in due course this appeal came to be heard in the said Court in the month of May, 1921.

14. That thereafter upon the 1st day of July, 1921, the Supreme Court of Pennsylvania in an opinion reported in 271 Pa. 468, affirmed the action of the Court below, which was the final determination that the deceased at the time of the injuries sustained was engaged in interstate commerce, as against the verdict of the jury to the contrary.

15. That thereafter a reasonable time was required for the examination of the opinion and the question of law involved on any other proceeding.

16. That upon the 23d day of September, 1921, Letters of Administration on the Estate of Lester M. Koons were duly granted to John L. Koons, plaintiff herein, by the Register of Wills of Dauphin County; and that prior to that time no Letters of Administration in the said Estate had been granted to anyone.

17. That upon the 6th day of February, 1922, the plaintiff herein brought this his action under the provisions of the Statutes of the United States, particularly the Act of April 22, 1908, and its supplements, known as the Federal Employers Liability Act, the plaintiff's statement being upon the same day duly filed.

18. And the plaintiff particularly denies the conclusion of law in the petition for this rule set forth and avers that this present action was commenced within two years from the date the cause of action accrued.

Wherefore, the plaintiff prays that the rule granted to show why a judgment of non pros. should not be entered, because the writ was not issued in time, be dismissed.

John L. Koons, Administrator of Lester M. Koons, by Jno.
R. Geyer, Attorney.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

[Title omitted]

OPINION

By the COURT:

It appears from the allegations in the petition and answer that on April 22, 1915, Lester M. Koons, for whose death this action was brought, while in the employ of the defendant, and through the alleged negligence of the defendant, sustained injuries from which he died the next day; that on the 20th day of April, 1916, John L. Koons and Malinda Koons, the surviving parents of said Lester M.

Koons, brought their action against this defendant in the Court of Common Pleas of Dauphin County to recover for the death of the said Lester M. Koons, under the statute in force in this Commonwealth [fol. 9a] wealth; that to this action the defendant did not file an affidavit of defense; that because of the congested state of the trial list and because of the serious illness of counsel for the plaintiffs the cause was not brought to trial until May, 1917, at which trial the defendant produced affirmative proof that the deceased, at the time the injuries were sustained, was engaged in interstate commerce; that the jury found as a fact that the deceased was not engaged in interstate commerce and returned a verdict May 19, 1917, in favor of the plaintiffs and against the defendant; that upon May 19, 1917, the defendant therein filed its motion for judgment notwithstanding the verdict on the contention that under all the evidence it appeared that the deceased was engaged in interstate commerce and no recovery could be had, which motion was argued in the month of October, 1916; no decision was reached by the trial judge until 1920, when the verdict was set aside and it was directed that the judgment be entered in favor of the defendant; that the defendant did not upon said order cause any judgment to be entered in its favor until September 29, 1920, when judgment was so entered, and on September 30, 1920, the plaintiffs in that proceeding filed their appeal to the Supreme Court of Pennsylvania, which, in due course, heard the appeal in May, 1921, and affirmed the judgment of the court below July 1, 1921; that upon September 23, 1921, letters of administration on the estate of Lester M. Koons were duly granted to John L. Koons, plaintiff herein, by the Register of Wills of Dauphin County, and that prior to that time no letters of administration in said estate had been granted to any one; and on February 6, 1922, the plaintiff herein brought this action under the provisions of the statute of the United States, particularly the Act of April 22, 1908, and its supplements, known as the Federal Employers' Liability Act, the plaintiff's statement being filed upon [fol. 10a] the same day, whereupon the defendant presented its petition April 2, 1923, praying for judgment of non pros. for the reason that it is provided in Section 6 of the Act of April 22, 1908, as amended by the Act of April 5, 1910, (United States Compiled Statutes, 1916, Section 8662) that "no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued;" that the action accrued at the time of the death of Lester M. Koons, April 23, 1915, and therefore a period of more than two years had expired between the alleged accruing of the action and the date of bringing this suit.

The defendant's answer from which we have quoted largely, denies the legal conclusions for which the plaintiff contends, and the case turns upon the interpretation of the last two words of the Act of Congress of 1908, from which we have quoted, to wit: when the "action accrued."

The decisions upon this question are not uniform. In *Bixler et ux. vs. Penna. Railroad*, 201 Fed. Reporter, 553, it was held by Federal Judge Witmer that:

"A cause of action under the Employer's Liability Act * * * and supplements thereto, for the death of an employee of a railroad company engaged in interstate commerce, accrues on the death of the employee from the injuries sustained in the service, and not on the appointment of his personal representative, competent and empowered to sue for his death."

The District Court relied for authority for its decision, upon *Dodge vs. Town of North Hudson* (C. C.) 188 Fed. 492.

The Supreme Court of Georgia in *Seaboard Air Line Railway vs. Brooks*, 107 S. E. 278, reached the same conclusion, and held that [fol. 11a] an action for damages under the said section six of said Act of Congress is barred by the statute of limitations where it was commenced more than two years after the date of the homicide sued for, but within two years from the date of the appointment of the administratrix. Judge Gilbert, writing the opinion of the Supreme Court of Georgia refers to *Bixler vs. Railroad Co.*, with approval—see page 880. Judge Gilbert also quotes with approval from *Tiffany on Death of Wrongful Act*, Section 121 (Vide page 879), as follows:

"Inasmuch as the act which creates the limitation also creates the action to which it applies, the limitation is not merely of the remedy but is of the right of action itself. * * * It is certain that no exception can be alleged to excuse the delay."

The Supreme Court of Kansas also reached the same conclusion in the case of *Giersch vs. Atchison, T. & S. F. Railway Co.*, 171 Pac. 591, in which the conflicting opinions upon this subject were discussed by West, J., from which decisions two Judges dissent. This case seemed to turn, however, upon whether the widow who first brought her action in that capacity, which action, it was held by the Supreme Court of Kansas, could not be maintained, could thereafter, upon her appointment as administratrix, be substituted as plaintiff in her fiduciary capacity. Leave was granted to her to amend in the court below whereupon the jury returned a verdict against the defendant for causing the death of plaintiff's intestate. We quote from the conclusion reached by the Judge writing the opinion:

"The Federal statute is not retroactive. It is intended to supersede all other bases of actions wherever applied. It has repeatedly been [fol. 12a] said to be similar to the Lord Campbell Act, and in fixing the limitation at two years it was difficult to conceive that all this time and more might elapse before an administrator might be appointed, and that he would then have two years longer in which to sue which would be the case if the time ran from his appointment and not from the death of the deceased. While, of course, this is a case finally for the Federal Supreme Court, we hold that, in view of the authorities now obtainable, the action must be brought

within two years from the date of the death, and therefore that the administratrix in this case cannot prevail."

Turning now to the contrary view, as held by other eminent authorities, we find the most important case, and the one which we think is controlling, to be *American Railroad Co. of Porto Rico vs. Coronas*, 230 Fed. Reporter 545. This case was decided by the Circuit Court of Appeals of the First Circuit, March 1, 1916, before Circuit Judges Dodge and Bingham and District Judge Aldrich. The opinion of the court was written by Circuit Judge Bingham. We feel that as the matter involves the construction of a Federal statute the construction placed upon it by the Federal courts should be controlling. We think further that the *Coronas* case is directly in point. The judgment and decree of the Circuit Court of Appeals is final and conclusive except in the several instances in which an appeal is allowed to the Supreme Court of the United States. On a question of construction of an Act of Congress no appeal lies to the Supreme Court and the action is not reviewable unless the judgment is not made final and the court of appeal especially certifies the matter to the Supreme Court, or unless, under section 240 of the Judicial Code, the Supreme Court specially allows an appeal. The Supreme Court of the United States not having interpreted the section [fol. 13a] tion under consideration, we feel bound to follow the decision of the Circuit Court of Appeals in *American Railroad Co. of Porto Rico vs. Coronas*, *supra*.

In this case an action under the Federal Employers' Liability Act of April 22, 1908, * * * was brought by Amador Riera Coronas, administrator of the estate of Pedro Didricksen, against the American Railroad Company of Porto Rico in the District Court of the United States for Porto Rico, to recover damages resulting from the death of his intestate, who died on the 8th day of December, 1908, because of injuries which he sustained on the 30th of the preceding November, while employed by the defendant in switching and coupling cars on its railroad. Letters of administration were granted the plaintiff on the 12th of May, 1914, and this action was brought December 17, 1914. There was a trial by jury and a verdict for the plaintiff. An appeal was taken to the United States Circuit Court of Appeals of the First Circuit, the errors assigned being, first, to the overruling of a demurrer to the declaration setting forth that the action was barred in that it was not brought within the two year limitation of Section 6 of the Act. We are not interested in the second bill of error. The substantial question was raised by the first assignment of error, the question being whether the action accrued so that the statute began to run from the death or from the appointment of the administrator, when there was some one in existence who could enforce the liability. The learned Circuit Judge, in writing the opinion of the court—see page 547—proceeds to reason as follows:

"It is to be noted that the statute does not require that the action shall be brought within two years from the death but within two

years from the time the cause of action accrued. It is also to be noted that the action is not for the occurrence out of which the [fol. 14a] death arose, but for the pecuniary damage to the beneficiaries due to the death; so that, in no event could the cause of action arise until after the death, or be said to exist, so that the statute could run until after that time. We may therefore assume that the statute, so far as this cause of action is concerned, did not begin to run until after the death had ensued.

"It is a general rule of law that where a cause of action arises as in this case, after death, it is considered as accruing for the purpose of the running of the statute, only from the time when there is some one in existence capable of suing, and if no one but the administrator can sue, that the statute does not begin to run until administration is granted. This principle was announced at an early day. The leading English case on the subject is *Murrey, Administrator, vs. East India Co.*, 5 Barn. & Ald. 201, which has been very generally followed in this country. It was an action by an administrator, with the will annexed, upon a bill of exchange, made payable to the testator but accepted after death. The acceptance of the bill and the day of payment were more than six years before suit was brought but administration was first taken out less than six years before and it was held that the statute of limitations began to run from the granting of letters of administration, and not from the time the bill became due, as the cause of action did not accrue until there was a party capable of suing."

Judge Bingham supports his conclusion by the citation of very numerous and eminent authorities from some of which we will quote. In *Sanford vs. Sanford*, 62 N. Y. 553-554, it was held:

"The term 'cause of action' includes not only the right proper, but [fol. 15a] the existence of a person by or against whom process can issue. A cause of action cannot accrue or exist unless there is a person in esse against whom an action can be brought and the right of action enforced. It is well said that, 'when there is no person to sue there can be no laches.' A case literally within the words of the statute is without its spirit when it is impossible to maintain a suit at law: *Richards vs. Maryland Insurance Co.*, 8 Cranch, 84 (3 L. Ed. 496). It is directly adjudged that the statute does not commence to run against the representative of a deceased creditor upon an obligation incurred, or debt become due after his decease, until administration is granted upon his estate, there being no cause of action until there is a party capable of suing: *Murrey vs. East India Co.*, supra," and other cases cited. "In order to put the statute in motion there must not only be a person in esse to sue, but a person to be sued * * *: *Levering vs. Rittenhouse*, 4 Whart. (Pa.) 130" and other cases.

In *Levering vs. Rittenhouse, et al.*, supra, referred to in the last quoted case, it was held.

"If a surety pays the debt of his principal after the death of the latter, and when no letters of administration have been taken out

upon his estate, the statute of limitations does not begin to run until letters of administration are taken out."

In reaching a conclusion in the above stated case—see page 138—Mr. Justice Kennedy reasons as follows:

"But, if Joseph was dead at or before the time his father paid this money, and no letters of administration were taken out upon his estate, then the debt remained in force at the time of the declaration made by his father, because there never having been any person [fol. 16a] such as an executor or administrator in being, of whom this money which had become a debt against the estate of Joseph, could be demanded, or who could be sued for it, the statute of limitation never could be said to have commenced running and consequently could form no bar. It is only where the creditor may and has a right to sue that the statute commences running; but as soon as the moment shall have arrived it commences and nothing can interrupt or prevent it running afterwards: *Stanford's Case*, 5 Co. 123, cited also in *Saffyn vs. Adams*, Cro. Jac. 60-1; *Cary vs. Stephenson*, Salk. 42; *Hickman vs. Walker*, Wills Report, 29; *The East India Co. vs. Murrey's Administrator*, 5 B. & A. 204; *Geiger vs. Brown*, 4 McCord, 423."

Levering vs. Rittenhouse was cited with approval in *Benneville Riner, Admr. of Rebecca Riner vs. John Riner, Admr. of George Riner, Deceased*, 166 Pa. 617-18, where-in it was held:

"A cause of action does not exist unless there be a person in existence capable of suing or being sued. When one receives money belonging to the estate of an intestate after his death and before administration granted, the statute runs not from the date of the receipt but from the grant of administration. Where an action is brought by an administrator to recover money paid by an insurance company to a person who had no insurable interest in the life of the plaintiff's intestate, the statute of limitations begins to run only from the date of the grant of letters of administration to the plaintiff. In such a case the fact that there was gross laches in taking out administration does not defeat the right of action." [fol. 17a] In *Marstellar vs. Marstellar*, 93 Pa. 350-54, also quoted in the foregoing citation, it was held:

"The statute does not begin to run until a right of action is complete. A cause of action does not exist unless there be a person in existence capable of suing or being sued, "citing *Murrey vs. East India Co.*, supra; *Douglas vs. Forrest*, 4 Bing. 702; *Levering vs. Rittenhouse*, supra.

See also *Appeal of Amole's Administrators*, 115 Pa. 356, in which *Marstellar vs. Marstellar* is quoted with approval.

In further support of his conclusion, Judge Bingham, in the *Coronas* case cited—see page 548—*Collier vs. Goessling*, 160 Fed. 604, 611; 87 C. C. A. 506, wherein Judge Lurton, speaking for the Circuit Court of Appeals for the Sixth Circuit, said:

"To start the running of the statute of limitations there must be some one capable of suing, some one subject to be sued, and a tribunal open for such suits;"

and *Fulenweider's Case*, 9 Ct. Cl. (U. S.) 403, where it was sought to defeat a contract claim against the government on the ground that it was barred by the statute. The Act of Congress of March 3, 1863, provides "that every claim against the United States, if cognizable by the Court of Claims, shall be forever barred unless a petition setting forth a statement of the claim be filed in the court or transmitted to it under the provisions of this Act within six years after the claim first accrues." It appeared that the contractor died before the claim accrued, the service having been completed June 1, 1861. The petition was not filed until March 13, 1873, but administration was granted December 19, 1870, and it was held:

[fol. 18a] "It is a well settled rule that if, when the right of action would otherwise accrue, and the statute of limitations begin to run, there is no person in existence who is qualified to sue upon that right, the statute does not begin to run till there is such a person: *Angell on Limitations*, Section 54-63. For this claim none but a personal representative— * * * could sue; and there was no personal representative until December 19, 1870, when the statute began to run, less than three years before this suit was brought."

Judge Bingham then proceeds—on page 548 to 553 inclusive—to quote from the Supreme Courts of Iowa, Illinois, Ohio, Connecticut, Michigan, Missouri and Kentucky, all of which support the conclusion which he has reached, and closes his opinion in the following language—see page 553—

"In *Missouri, Kansas and Texas Railway Co. vs. Wulf*, 226 U. S. 570, the question as to when the right of action under the statute accrued was not discussed or determined. The point decided was that as the two years' limitation within which an action could be brought, had terminated prior to the time the plaintiff asked leave to appear as administratrix, the desired amendment would not be the introduction of a new cause of action.

"In view of the well recognized rule heretofore pointed out as to when a right of action accrued—which Congress must have had in mind when enacting the present law—and in view of the fact that Lord Campbell's Act upon which the Employers' Liability Act was modeled, expressly provided that the limitation should run from the death of the injured party, and that in the enactment of the present law, Congress declined to adopt such a limitation and fixed the period from the time the action accrued, we are of the opinion that the [fol. 19a] proper construction of the statute is that the right of action did not accrue so that the limitation attached, until the administrator was appointed, and that the demurrer was properly overruled."

As we have before stated, the decisions upon the question at bar are very conflicting, and cannot be reconciled, but we feel that the

great weight of authority is in support of the conclusion reached by the Circuit Court of Appeals of the United States in the *Coronas* case, and appears to us to be the rule long since adopted by the Supreme Court of Pennsylvania; *Levering vs. Rittenhouse*, *supra*.

We conclude, therefore, that the statute of limitations provided for in the Act of Congress did not begin to run until the appointment of the plaintiff as administrator of the deceased; that the action now pending was commenced within the statutory period provided by the Act of Congress, after the appointment of the plaintiff as administrator of the deceased, and therefore the motion of the defendant for judgment of non pros. must be and is hereby overruled. Exception allowed to the defendant.

Frank B. Wickersham, Judge.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

[Title omitted]

PLAINTIFF'S STATEMENT

This action is brought to recover damages from the defendant in a cause of action whereof the following is a more specific statement.

[fol. 20a] 1. The defendant is a corporation incorporated under the laws of the Commonwealth of Pennsylvania.

2. On, about, and before the 22d day of April, 1915 the defendant was engaged in maintaining and operating a railroad in interstate commerce.

3. On or about the 22d day of April, 1915, Lester M. Koons was employed by the said defendant company as a laborer in and about the yards of the said railroad thus being operated by the said defendant at a place near the City of Harrisburg, commonly known as Rutherford Yards.

4. That at the time of the happening of the things hereinafter complained of, as has been judicially determined in a proceeding to No. 410 June Term, 1916 in the Court of Common Pleas of Dauphin County, Pennsylvania, the said Lester M. Koons was then engaged in interstate commerce.

5. That being thus employed the said Lester M. Koons was by the said defendant assigned under the charge, supervision and direction of one George Zimmerman.

6. That the said George Zimmerman was the person in charge of and directing the particular work in which the said Lester M. Koons was engaged and to whose orders the said Lester M. Koons was bound to conform.

7. That on the said day the said Lester M. Koons was directed by the said George Zimmerman to undertake the unloading of a certain

wrecked freight car, to wit, Car 519 of the Mississippi Central Railroad Company then upon another car in the yard of the defendant.

8. That the said Mississippi Central Railroad Company freight car was a car of facility then being used in interstate commerce.

9. That the said Lester M. Zimmerman was then and there ordered and directed by his said employer to undertake the work of unloading the said car by means of a crane or tackle.

[fol. 21a] 10. That in the work of so doing the said defendant did carelessly and negligently supply a certain appliance, to wit, a chain with certain "dogs" or hooks attached to be used in the lifting of the said portion of the wrecked car.

11. That the said Lester M. Koons and his fellow servants, being thus directed to use the same or certain of them protested that the said appliance was not the proper appliance and not safe.

12. That it was then and there available certain other appliances, to wit, certain chains which could have been passed around the certain material to be lifted and were the better adapted for the purpose.

13. That they, the said Lester M. Koons and his fellow workmen, or certain of them suggested that these chains be used for the said work.

14. That nevertheless the said defendant did then order, direct and instruct the said Lester M. Koons and his fellow servants to attach and use the said dogs or hooks.

15. That the same being attached, the said defendant did carelessly and negligently order the material thereby to be lifted and did thereupon order the said Lester M. Koons into a dangerous place thus created to assist in so doing.

16. That while the said car or a large part thereof was being lifted one of the dogs or hooks of the said chain slipped thereby causing the load to slip or drop striking the said Lester M. Koons upon the head or body and inflicting upon him serious injuries.

17. That in consequence of the said injuries thus sustained the said Lester M. Koons did, upon the same day, to wit, the 22d day of April, 1915, or in the early hours of the 23d day of April 1915, die.

18. That the said Lester M. Koons died unmarried and without issue.

[fol. 22a] 19. That the said Lester M. Koons died leaving to survive him his father, John L. Koons, who is also the administrator of his estate, and Malinda Koons, his mother.

20. Although over the age of 21 the said Lester M. Koons continued to perform numerous acts of aid and assistance to his parents

and from time to time contributed for their aid, comfort and support, large sums of money.

21. That had he, the said Lester M. Koons, continued to live he would from time to time so long as he lived, or they lived, or either of them, have continued to perform the said acts of service and assistance, and to contribute sums of money to them.

22. That the said Lester M. Koons at the time of his death and before that time was able to earn and did earn sums of money.

23. That by reason of the death of the said Lester M. Koons there was required to be expended large sums of money in the payment of funeral and burial expenses which sums are a claim against his estate and have been paid by the said John L. Koons.

24. That after the death of the said Lester M. Koons, John L. Koons and Malinda Koons, his father and mother, brought their action under the statutes in force in the Commonwealth of Pennsylvania, wherein a recovery was denied upon the ground that the defendant and the deceased were both at the time of the happening of these said events engaged in interstate commerce, and that no liability existed under the statutes or common law in force in Pennsylvania.

25. That the judgment in favor of the defendant in the said court was affirmed upon appeal upon the 1st day of July, 1921.

26. That thereafter, to wit, upon the 23d day of September, 1921, [fol. 23a] Letters of Administration in the Estate of Lester M. Koons were duly granted to the plaintiff, by the Register of Wills of Dauphin County.

27. That before the granting of these said Letters of Administration no Letters of Administration or Letters Testamentary against the estate of the said Lester M. Koons had been granted to anyone.

28. Wherefore the plaintiff brings this his action under the provisions of the statutes of the United States for the benefit of the surviving parents of the said Lester M. Koons for such death resulting from the negligence of the defendant, its officers, agents or employees, and by reason of defect or insufficiency due its negligence in its appliances, machinery or other equipment.

29. For these matters the plaintiff claims of the defendant damages in the sum of Ten Thousand Dollars.

30. On all of these matters the plaintiff demands trial by jury.
E. E. Erb, Jno. R. Geyer, Attorneys for Plaintiff.

Sworn to by John L. Koons. Jurat omitted in printing.
[fol. 24a] February 6, 1922, service accepted.

Jno. T. Brady, Attorney for Defendant.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

[Title omitted]

STIPULATION RE VERDICT AND JUDGMENT

And now, October 12, 1923, the Court having discharged the rule for the dismissal of the action for the reason assigned that it was barred by the statute of limitations, and the cause having come on for trial, it is agreed by and between the parties hereto as follows:

1. That a verdict shall be entered in favor of the plaintiff and against the defendant, in the sum of Twenty-five hundred and ten dollars (\$2,510) with the same force and effect as though a trial had been had.

[fols. 25a & 26a] 2. That the verdict and the judgment to be entered thereon shall be subject to the exception that the learned Court erred in discharging the said rule and in overruling the motion of the defendant for judgment of non pros., which may be reviewed by an appeal to the Supreme Court of Pennsylvania and the Supreme Court of the United States, if such can be had, without any question that the matters should have been heard upon the trial, which is waived by this agreement.

John R. Geyer, Elmer E. Erb, Attorneys for Plaintiff. Jno.
T. Brady, Attorney for Defendant.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

VERDICT

We find in favor of the plaintiff and against the defendant in the sum of Twenty-five Hundred and Ten Dollars (\$2,510).

October 12, 1923.

JUDGMENT

Oct. 23, 1923.—Judgment on the verdict.

[fol. 27a] IN SUPREME COURT OF PENNSYLVANIA

No. 222, January Term, 1922

JOHN L. KOONS, Administrator of Lester M. Koons,

vs.

PHILADELPHIA & READING RAILWAY COMPANY, Appellant

Appeal of Defendant from judgment of Common Pleas of Dauphin County

DOCKET ENTRIES

Nov. 8, 1923.—Appeal and affidavit filed.

Eo die.—Exit writ rtble. 21st Monday of the year 1924.

Nov. 10, 1923.—Notice of appeal, etc., filed.

May 23, 1924.—Record filed.

May 24, 1924.—Assignments of error filed.

May 26, 1924.—Argued.

Oct. 6, 1924.—Judgment affirmed. Per Curiam. F.

Oct. 15, 1924.—Petition to hold record filed.

And now, this 16th day of October, A D. 1924, upon consideration of the foregoing petition and upon the representation that the above [fol. 28a] appellant will take the necessary steps to present the case to the Supreme Court of the United States for review it is ordered that the record in the above-entitled case be held by the Prothonotary of this Court and be not remitted to the Court of Common Pleas of Dauphin County until the expiration of forty days from the date hereof.

R. von M., Chief Justice.

Oct. 24, 1924.—Petition for reargument filed.

Oct. 25, 1924.—Reargument refused. R. von M., C. J.

IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

APPEAL AND AFFIDAVIT—Filed Nov. 8, 1923

Enter Appeal on behalf of Philadelphia & Reading Ry. Co., from the judgment of the Court of Common Pleas of the county of Dauphin.

To William Pearson, Proth'y Sup. Ct. Middle District.

Jno. T. Brady, Attorney.

[fol. 29a] STATE OF PENNSYLVANIA,
County of Dauphin, ss:

John T. Brady, being duly sworn, saith that the above Appeal is not intended for delay, but because he firmly believes that the Appellant suffered injustice by the judgment from which it desires to appeal.

Jno. T. Brady.

Sworn and subscribed before me this 8th day of November, A. D. 1923. Homer Hummel Strickler, Deputy Prothonotary of Supreme Court Middle District. (Seal.)

[File endorsement omitted.]

[fol. 30a] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

NOTICE OF APPEAL—Filed Nov. 16, 1923

To Appellee or his Counsel:

You are hereby notified that on November 8, 1923, an appeal was taken to the above court in the above-entitled case.

John T. Brady, Attorney for Appellant.

November 8, 1923. Service of the foregoing notice is hereby accepted; and the Prothonotary of the above court is directed to enter the appearance of the undersigned for the appellee.

Elmer E. Erb & John R. Geyer, Attorneys for Appellee.

NOTE.—Counsel for Appellant should serve the foregoing notice upon the opposite party or his counsel as required by Rule 58 (printed below) and return it with acceptance of service to the office of the Prothonotary, 435 Capitol Building, Harrisburg, Pa., for filing. If necessary under Rule 58, notice should also be served on the judge of the lower court and the stenographer

[fol. 31a] Rule 58. Immediately upon taking his appeal, appellant shall serve notice thereof on the opposite party or his counsel; and, if the appeal relates to any order, judgment or decree, for which the reasons do not already appear of record, on the judge who entered it; and also, if the official transcript of the evidence needed on the appeal has not been filed, on the stenographer who took it. Upon receipt of such notice, the court below shall forthwith file of record at least a brief statement of the reasons for such order, judgment or decree, in the form of an opinion, which shall be attached to the record and printed; and the official stenographer shall forthwith proceed to have his notes transcribed, approved and filed.

[File endorsement omitted.]

[fol. 32a] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed May 24, 1924

1. The learned Court erred in overruling the petition of the defendant for judgment of non pros., for the reason that the action is barred by the two year limitation contained in the Act of Congress and in discharging the rule to show cause granted thereon, the prayer of said petition, the rule, and the judgment entered thereon being as follows:

Prayer of Petition

"Your petitioner therefore prays that a rule be granted upon the above named plaintiff to show cause why a judgment of non pros. should not be entered in the above stated action because the writ was not issued in time."

Philadelphia & Reading Railway Company, by Jno. T. Brady, Attorney.

The Rule

"And now, April 2, 1923, rule granted on plaintiff as prayed for to show cause why a judgment of non pros. should not be entered. Returnable in ten days.

By the Court.

Frank B. Wickersham, J.

[fol. 33a]

The Judgment Thereon

"We conclude, therefore, that the statute of limitations provided for in the Act of Congress did not begin to run until the appointment of the plaintiff as administrator of the deceased; that the action now pending was commenced within the statutory period provided by the Act of Congress after the appointment of the plaintiff as administrator of the deceased, and therefore the motion of the defendant for judgment of non pros. must be and is hereby overruled. Exception allowed to the defendant."

Frank B. Wickersham, Judge.

2. The learned Trial Judge erred in his conclusion in the opinion filed as follows:

"We feel that as the matter involves the construction of a Federal statute the construction placed upon it by the Federal courts should be controlling. We think further that the Coronas case is directly in point. The judgment and decree of the Circuit Court of Appeals is final and conclusive except in the several instances in which an appeal is allowed to the Supreme Court of the United States. On a

question of construction of an Act of Congress no appeal lies to the Supreme Court and the action is not reviewable unless the judgment is not made final and the court of appeal especially certifies the matter to the Supreme Court, or unless, under section 240 of the Judicial Code, the Supreme Court specially allows an appeal. The Supreme Court of the United States not having interpreted the section under consideration, we feel bound to follow the decision of the Circuit Court of Appeals in *American Railroad Co. of Porto* [fol. 34a] *Rico vs. Coronas, Supra.*"

For which matters the judgment of the Court below should be reversed.

Jno. T. Brady, Attorney for Appellant.

[File endorsement omitted.]

[fol. 35a] . IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

OPINION—Filed Oct. 6, 1924

Per CURIAM:

Plaintiff as administrator of the estate of his son Lester M. Koons, sued to recover for the death of the latter, which resulted from injuries received while in the employ of defendant Company. The accident occurred April 22, 1915, at which time both the young man and defendant were engaged in interstate commerce. Death as a result of the injuries received followed on April 23, 1915. Letters of administration, on the son's estate, were granted plaintiff, September 23, 1921, and this action begun by him as such administrator February 6, 1922. On defendant's petition setting forth the facts as above stated a rule was granted on plaintiff to show cause why judgment of non pros. should not be entered for the reason that the action was instituted more than two years after the death, and consequently was barred by the limitation contained in the Federal Employers Liability Act.

Following answer and argument the Court below discharged the rule, plaintiff's contention being that the limitation did not begin to run until the appointment of plaintiff as administrator, and the action having been commenced within the period of two years following such appointment was in time.

[fol. 36a] At the trial, the parties stipulated of record that a verdict should be entered in plaintiff's favor for \$2,510.00, subject to the exception that the Court erred in discharging defendant's rule and overruling its motion for judgment of non pros., defendant reserving its rights to an "appeal to the Supreme Court of Pennsylvania and the Supreme Court of the United States, if such can

be had, without any question that the matters should have been heard upon trial which is waived by this agreement." The Court subsequently entered judgment on the verdict and this appeal followed.

The limitation referred to involves the construction to be placed on Section 6 of the Act of Congress of April 22, 1908, as amended by the Act of April 5, 1910, entitled, "an act relating to the liability of common carriers by railroad to their employes in certain cases." (U. S. compiled statutes 1916, Section 8662.) The clause of the section referred to, material here, reads as follows: "No action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued." Whether the "cause of action" arose upon the death of the employe or upon the appointment of an administrator, the sole question for determination here, was before the United States Circuit Court of Appeals in *American Railroad Company of Porto Rico vs. Coronas*, 230 Federal Reports 545, wherein a judgment was sustained to recover under the Federal Employers Liability Act for the death of an employe in a suit which was not commenced until the appointment of an administrator, more than five years after the employe's death; in construing the limitation section referred to, the Court there said, "It is a general rule of law that where a cause of action arises as in this case, after death, it is considered as accruing for the purpose of the running of the statute, [fol. 37a] only from the time when there is some one in existence capable of suing, and if no one but the administrator can sue, that the statute does not begin to run until administration is granted. This principle was announced at an early day." Since the argument of this case the Circuit Court of Appeals for 3rd district in *Guinther, Administratrix vs. Philadelphia & Reading Railway Co.* (not yet reported), in passing on the limitation clause here involved where the administratrix was not appointed until six years after death, held the cause of action did "not accrue until the appointment of a personal representative of the deceased who is capable of suing." As the question raised here is identical with that passed upon in the two cases referred to and requires interpretation of a Federal Statute, we will follow the construction placed upon the limitation clause by the two Federal Courts above mentioned and affirm the judgment of the Court below.

Judgment affirmed.

IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

MINUTE ENTRY OF JUDGMENT

Argued May 26, 1924. Judgment affirmed.

Per Curiam. F.

[File endorsement omitted.]

[fol. 38a] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

PETITION TO HOLD RECORD AND ORDER THEREON—Filed Oct. 14, 1924

To the Honorable the Chief Justice and Justices of the Supreme Court of Pennsylvania:

The petition of Reading Company respectfully represents:

That the Philadelphia & Reading Railway Company was the appellant in the above stated case; that on December 31, 1923, the said Philadelphia & Reading Railway Company was merged with your petitioner, that on October 6, 1924 your Honorable Court handed down an opinion affirming the judgment of the Court of Common Pleas of Dauphin County, entered to No. 222 January Term, 1922, which judgment under the merger agreement aforesaid is an obligation of your petitioner.

That the only question involved in the above appeal was the construction of Section 6 of the Act of Congress of April 22, 1908, as amended by the Act of April 5, 1910, entitled "An Act relating to the liability of common carriers by railroad to their employes in certain cases" (U. S. Compiled Statutes 1916, Section 8662), which reads as follows:

"No action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued."

That your Honorable Court in affirming the above stated judgment followed the construction placed upon the limitation clause [fol. 39a] by the Circuit Court of Appeals for the First Circuit and by the Circuit Court of Appeals for the Third Circuit.

That as the question involved is a Federal one, your petitioner desires if possible to have the judgment reviewed by the Supreme Court of the United States.

Your petitioner therefore prays your Honorable Court to extend the time within which under Rule 88 the record is to be remitted to the court from which the appeal was taken to permit your petitioner to take the necessary steps to present the case to the Supreme Court of the United States for review.

And it will ever pray, &c.

Reading Company, by Jno. T. Brady, Attorney.

Order

And now this 16th day of October, A. D. 1924, upon consideration of the foregoing petition and upon the presentation that the above appellant will take the necessary steps to present the case to the Supreme Court of the United States for review it is

Ordered that the record in the above-entitled case be held by the prothonotary of this Court and be not remitted to the Court of Common Pleas of Dauphin County until the expiration of forty days from the date hereof.

R. von M., Chief Justice.

[fol. 40a] [File endorsement omitted.]

IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

PETITION FOR REARGUMENT—Filed Oct. 24, 1924

To the Honorable the Chief Justice and Justices of the Supreme Court of Pennsylvania:

The petition of Reading Company respectfully represents:
[fol. 41a] That the Philadelphia & Reading Railway Company was the appellant in the above stated case; that on December 31, 1923, the said Philadelphia & Reading Railway Company was merged with your petitioner; that on October 6, 1924, your Honorable Court handed down an opinion, copy of which is hereto attached, affirming the judgment of the Court of Common Pleas of Dauphin County, entered to No. 222 January Term, 1922, which judgment under the merger agreement aforesaid is an obligation of your petitioner.

That the only question involved in the above appeal was the construction of Section 6 of the Act of Congress of April 22, 1908, as amended by the Act of April 5, 1910, entitled "An Act relating to the liability of common carriers by railroad to their employes in certain cases" (U. S. compiled Statutes 1916, Section 8662), which reads as follows:

"No action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued."

Your Honorable Court in affirming the above stated judgment followed the construction placed upon the limitation clause by the Circuit Court of Appeals for the First Circuit in *American Railroad of Porto Rico vs. Coronas*, 230 Federal, 545, and by the Circuit Court of Appeals for the Third Circuit in *Guinther, Administratrix, vs. Philadelphia & Reading Railway Company*, not yet reported, holding that the two years' limitation fixed by the Act of Congress does not begin to run until administration is granted on the estate of the deceased employe; that your Honorable Court based your conclusion apparently solely upon the fact that as the case required the interpretation of the Federal statute, the construction placed upon the limitation clause by the two Federal Courts should be controlling; [fol. 42a] that under the provisions of Section 6 of the said Act of Congress the jurisdiction of the courts of the United States is con-

current with that of the courts of the several states, and since the passage of the Workmen's Compensation Law the said Act of Congress is the controlling statute in all actions properly brought against interstate carriers to recover damages for personal injury or death resulting from negligence; that your petitioner is advised that the judgment of the Circuit Court of Appeals for the Third Circuit in the Guinther case is not such a final order as will permit a review of the decision by the Supreme Court of the United States at this time; that as the decision of your Honorable Court in the present case does not draw in question the validity of the Act of Congress referred to, but merely the construction to be placed upon the limitation clause, a writ of error from the Supreme Court of the United States is not allowable: *Dana v. Dana*, 250 U. S. 220; *Philadelphia & Reading Coal & Iron Co. v. Gilbert*, 245 U. S. 162; that a review of this decision, therefore, by the Supreme Court of the United States can be had only if the Supreme Court of the United States grants a writ of certiorari and that if such writ be denied the decision of your Honorable Court will stand as the law of Pennsylvania in all cases brought under the Federal Employers' Liability Law, notwithstanding the fact that there has been no decision by a Federal Court that is binding upon your Honorable Court; that the principle involved in this appeal is of the utmost importance to your petitioner and all other railroads of the State.

That your Honorable Court extended the time within which the record is to be remitted to the Court of Common Pleas of Dauphin County for forty days from October 16th.

[fol. 43a] Your petitioner therefore prays your Honorable Court to grant a reargument in the above stated appeal and to reconsider the decision heretofore reached.

And it will ever pray.

Reading Company, by Jno. T. Brady, Attorney.

Sworn to by John T. Brady; jurat omitted in printing.

[fol. 44a] Reargument refused

R. von M., C. J.

[File endorsement omitted.]

COMMONWEALTH OF PENNSYLVANIA,
County of Dauphin, set:

IN SUPREME COURT OF PENNSYLVANIA

CLERK'S CERTIFICATE

I, William Pearson, Prothonotary of the Supreme Court of Pennsylvania, in and for the Middle District thereof, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct Copy of the Record in the case of John L. Koons, Administrator of Lester M. Koons, Plaintiff, vs. Philadelphia & [fol. 45a] Reading Railway Company, Defendant, at No. 11, May

Term, 1924, as printed for the use of the Supreme Court of Pennsylvania, together with the proceedings in the said Supreme Court, in the case there stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court at Harrisburg, in the County of Dauphin, in the said Middle District of Pennsylvania, this 25th day of November in the year of our Lord One Thousand Nine Hundred and Twenty-Four.

William Pearson, Prothonotary. (Seal of the Supreme Court of Pennsylvania, 1776.)

IN SUPREME COURT OF PENNSYLVANIA

JUDGE'S CERTIFICATE TO CLERK

1. Robt. von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania, being the highest court of law or equity of the said State, do certify that William Pearson by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Supreme Court of Pennsylvania, was at the time of so doing and now is Prothonotary in and for the Middle District of said Court, duly commissioned and qualified; to all of whose acts, [fol. 46a] as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

Rob't von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania. (Seal of the Supreme Court of Pennsylvania, 1776.)

COMMONWEALTH OF PENNSYLVANIA,
County of Dauphin, ss:

IN SUPREME COURT OF PENNSYLVANIA

CLERK'S CERTIFICATE TO JUDGE

I, William Pearson, Prothonotary of the Supreme Court of Pennsylvania, in and for the Middle District thereof, do certify that the Honorable Robt. von Moschzisker, by whom the foregoing attestation was made, and who has thereunto subscribed his name, was at the time of making thereof and still is Chief Justice of the Supreme Court of Pennsylvania, duly commissioned and qualified; to all of

whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 25th day of November, A. D., 1924.

William Pearson, Prothonotary. (Seal of the Supreme Court of Pennsylvania, 1776.)

[fol. 47a] SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the Supreme Court of the State of Pennsylvania

ORDER GRANTING PETITION FOR CERTIORARI—Filed Jan. 5, 1925

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of Pennsylvania, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

(6911)